

## Message Text

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DRAFTED BY EA/PRCM:L/M:HSHAMWELL:CED

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L/EA (INFO)

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FM SECSTATE WASHDC

TO AMCONSUL HONG KONG IMMEDIATE

INFO AMEMBASSY LONDON

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LIMDIS

E.O. 11652: N/A

TAGS: CGEN APER HK

SUBJECT: CONSULAR IMMUNITY

REF: HONG KONG 5787

1. REFTEL REQUESTED LEGAL GUIDANCE ON APPROACH TO HKG IN  
FACE OF PLANNED PROSECUTION OF CONSULAR OFFICER ONDRUNK  
DRIVING CHARGE. CONGEN SOUGHT DEPARTMENT'S DETERMINATION  
AS TO WHETHER ACT OF DRIVING HOME FROM CONGEN ON HONG KONG  
HOLIDAY QUALIFIES AS "CONSULAR FUNCTION" THE EXERCISE OF  
WHICH WOULD CLOTHE OFFICER WITH IMMUNITY FROM RECEIVING  
STATE JURISDICTION.

2. CONGEN CITED PERTINENT PORTIONS OF HKG CONSULAR  
RELATIONS ORDINANCES UNDER WHICH "CONSULAR OFFICERS ARE NOT  
AMENABLE TO JURISDICTION IN RESPECT TO ACT PERFORMED IN THE  
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EXERCISE OF THEIR CONSULAR FUNCTIONS." THIS LANGUAGE

TRACKS THAT OF ARTICLE 43 OF THE VIENNA CONVENTION ON  
CONSULAR RELATIONS OF 1963 WHICH CODIFIES THE MOST WIDELY-  
ACCEPTED RULE OF INTERNATIONAL LAW ON CONSULAR PRIVILEGES  
AND IMMUNITIES. IN DEPARTMENT'S VIEW SPECIFIC PROVISION  
ON SCOPE OF CONSULAR IMMUNITY DOES NOT, AS A GENERAL RULE,  
EXTEND TO DRIVING ACTIVITIES. THIS CONCLUSION IS

PARTICULARLY PERTINENT IN THE CASE OF DRIVING FOR PERSONAL  
REASONS. IF DEPARTMENT WERE CALLED UPON TO CERTIFY  
IMMUNITY OF FOREIGN CONSULAR OFFICER IN U.S. BASED UPON  
DRIVING OFFENSE, IT IS MORE THAN PROBABLE THAT SUCH A  
CERTIFICATION WOULD BE REFUSED.

3. WHILE DEPARTMENT HAS NO OBJECTION HKG'S EXTENSION OF  
IMMUNITY TO OFFICER IN CHARGE OR ANY EFFORTS ON PART OF  
CONGEN TO ACHIEVE THIS END, EITHER FORMALLY THROUGH  
EXISTING PROCEDURES BASED ON HKG LAW AND PRACTICE, OR  
INFORMALLY THROUGH OTHER CHANNEL. DEPARTMENT CANNOT  
SANCTION DEMAND FOR IMMUNITY BASED UPON PREVAILING  
INTERNATIONAL LAW IN VIEW OF DEPARTMENT'S READING OF  
PROPER APPLICATION OF RELEVANT RULES.

4. DEPT OF COURSE HOPES THAT HKG WILL BE WILLING TO STOP  
COURT ACTION. WE LEAVE TO YOUR DISCRETION THE WAY TO  
HANDLE MATTER WITH HKG, BUT ASSUME THAT IF THERE HAS NOT  
BEEN PROSECUTION IN PAST FOR ANY ROUGHLY COMPARABLE  
OFFENSES BY FOREIGN CONSULAR OFFICERS, THIS WOULD BE  
USEFUL POINT.

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**Channel Indicators:** n/a  
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